

**House File 490 - Reprinted**

HOUSE FILE 490  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 27)

(As Amended and Passed by the House March 14, 2011)

**A BILL FOR**

1 An Act creating a certificate of merit affidavit in a medical  
2 malpractice action.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 147.140 Expert certificate of merit  
2 affidavit — health care providers — requirements.

3 1. For purposes of this section, "health care provider"  
4 means a physician or surgeon, osteopathic physician or  
5 surgeon, dentist, podiatric physician, optometrist, pharmacist,  
6 chiropractor, physician assistant, or nurse licensed in this  
7 state, a hospital licensed pursuant to chapter 135B, or a  
8 health care facility licensed pursuant to chapter 135C.

9 2. a. In any action for personal injury or wrongful  
10 death against any health care provider based upon the alleged  
11 negligence of the licensee in the practice of that profession  
12 or occupation, or upon the alleged negligence of the hospital  
13 or health care facility in patient care, which includes a cause  
14 of action for which expert testimony is necessary to establish  
15 a prima facie case, the plaintiff shall, within one hundred  
16 eighty days of the defendant's answer, serve upon the defendant  
17 an expert's certificate of merit affidavit for each expert  
18 listed pursuant to section 668.11 who will testify with respect  
19 to the issues of breach of standard of care or causation.

20 b. Each certificate of merit affidavit must be signed by  
21 the expert. The affidavit must certify the purpose for calling  
22 the expert by providing under the oath of the expert all of the  
23 following:

24 (1) The expert's statement of familiarity with the  
25 applicable standard of care.

26 (2) The expert's statement that the standard of care was  
27 breached by the health care provider named in the petition.

28 (3) The expert's statement of the actions that the health  
29 care provider should have taken or failed to take to have  
30 complied with the standard of care.

31 (4) The expert's statement of the manner by which the breach  
32 of the standard of care was the cause of the injury alleged in  
33 the petition.

34 c. A plaintiff shall serve a separate affidavit on each  
35 defendant named in the petition.

1     *d.* Answers to interrogatories may serve as an expert's  
2 certificate of merit affidavit in lieu of a separately executed  
3 affidavit if the interrogatories satisfy the requirements of  
4 this subsection and are signed by the plaintiff's attorney and  
5 by each expert listed in the answers to interrogatories and  
6 served upon the defendant within one hundred eighty days of the  
7 defendant's answer.

8     3. The expert's certificate of merit affidavit does not  
9 preclude additional discovery and supplementation of the  
10 expert's opinions in accordance with the rules of civil  
11 procedure.

12     4. The parties by agreement or the court for good cause  
13 shown and in response to a motion filed prior to the expiration  
14 of the time limits specified in subsection 2 may provide  
15 for extensions of the time limits specified in subsection  
16 2. Good cause shall include the inability to timely obtain  
17 a plaintiff's medical records from medical providers when  
18 requested prior to filing suit and not produced.

19     5. If the plaintiff is acting pro se, the plaintiff shall  
20 sign the affidavit or answers to interrogatories referred to  
21 in this section and shall be bound by those provisions as if  
22 represented by an attorney.

23     6. *a.* Failure to comply with subsection 2 shall result,  
24 upon motion, in dismissal with prejudice of each cause of  
25 action as to which expert testimony is necessary to establish a  
26 prima facie case.

27     *b.* A written notice of deficiency may be served upon the  
28 plaintiff for failure to comply with subsection 2 because of  
29 deficiencies in the affidavit or answers to interrogatories.  
30 The notice shall state with particularity each deficiency of  
31 the affidavit or answers to interrogatories. The plaintiff  
32 shall have twenty days to cure the deficiency. Failure to  
33 comply within the twenty days shall result, upon motion, in  
34 mandatory dismissal with prejudice of each action as to which  
35 expert testimony is necessary to establish a prima facie case.

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1 A party resisting a motion for mandatory dismissal pursuant to  
2 this section shall have the right to request a hearing on the  
3 motion.